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*Denial of Writed, unmailed*

1                   JANUARY 28TH, 2005, 9:00 A.M., EL CAJON, CA., DEPT. 12

2

3                   THE BAILIFF: YOUR HONOR, 105, BURTON.

4                   MR. ADAIR: YOUR HONOR, COULD WE DO A SIDE BAR  
5                   ON THIS?

6                   THE COURT: NO.

7                   WE'RE ON THE RECORD IN THE CASE OF THE PEOPLE  
8                   VERSUS ERIC BURTON, SCE 238643.

9                   COUNSEL, YOUR APPEARANCES, PLEASE.

10                  MS. HANNAH: GOOD MORNING. MARIA HANNAH ON  
11                  BEHALF OF THE PEOPLE.

12                  MR. ADAIR: GOOD MORNING, YOUR HONOR. CHARLES  
13                  ADAIR ON BEHALF OF ERIC BURTON. HE'S PRESENT.

14                  THE COURT: ALL RIGHT. THIS IS THE DATE, TIME  
15                  AND PLACE SET FOR HEARING OF THE DEFENDANT'S MOTION TO  
16                  DISMISS THE AMENDED INFORMATION FOR ASSERTED INSUFFICIENCY  
17                  OF THE EVIDENCE PURSUANT TO PENAL CODE SECTION 995, AND,  
18                  ADDITIONALLY AND SEPARATELY, HEARING ON THE DEFENSE MOTION  
19                  TO SUPPRESS EVIDENCE PURSUANT TO PENAL CODE SECTION 1538.5.

20                  I'M MINDFUL OF THE PROCEDURAL HISTORY OF THIS  
21                  CASE. I'VE DONE A FULL REVIEW OF THE COURT FILE. I'VE READ  
22                  AND CONSIDERED THE PRELIMINARY HEARING TRANSCRIPT IN THIS  
23                  CASE AS CONDUCTED BACK ON APRIL 28TH OF 2004. I'VE READ THE  
24                  VARIOUS BRIEFS FILED IN SUPPORT OF THE PRESENT MOTIONS AND  
25                  IN OPPOSITION THERETO.

26                  THE COURT: IN TERMS OF THE MOST RECENT  
27                  RECEIVED FOR RELEASE, IT IS STAMPED THAT A MOTION WAS MADE  
28                  DEFENSE MOTION TO CONTINUE PURSUANT TO PENAL CODE SECTION

1 - 10:50 AM FOR REASONS THAT ARE GENERALLY SPEEDED OUT IN THAT  
2 - BRIEF WRITTEN MOTION. AS I KNOW, THAT MR. ADAIR CONTACTED COURT  
3 - STAFF ON WEDNESDAY TWO DAYS AGO AND ADVISED THAT HE DID DESIRE  
4 - A CONTINUANCE AT LEAST OF THE PRESENT HEARING.

5 PARENTHETICALLY, I ASSUME ALSO OF THE TRIAL INASMUCH AS THE  
6 TRIAL IS NOW SET FOR THIS COMING MONDAY, JANUARY 31ST.

7 - MR. ADAIR ADVISED COURT STAFF THAT HE WAS HIS  
8 - UNDERSTANDING THAT THE CONTINUANCE MOTION WOULD BE OPPOSED  
9 - BY THE PEOPLE THROUGH THEIR ASSIGNED PROSECUTOR, MISS HANNAH  
10 - AND ACCORDINGLY HE JUST DIRECTED COURT STAFF TO INFORM MR.  
11 - ADAIR THAT THE VARIOUS ASPECTS OF THIS CASE, INCLUDING THE  
12 - MOTION FOR CONTINUANCE, WOULD BE ADDRESSED THIS MORNING. SO  
13 - HERE WE ARE.  
14 - SO WITH THAT PREFACE, MR. ADAIR, IF YOU WISH TO  
15 - BE HEARD IN SUPPORT OF YOUR MOTION TO CONTINUE THIS MOTION  
16 - HEARING AS WELL AS THE TRIAL, PLEASE PROCEED.

17 MR. ADAIR: ACTUALLY, YOUR HONOR, WHILE YOU'RE  
18 TALKING, IT SEEMS LIKE I WAS THINKING THAT THE 995 COULD  
19 PROBABLY BE DECIDED BY YOUR HONOR TODAY BASED ON THE  
20 PRELIMINARY HEARING TRANSCRIPT AND I DON'T THINK ANY  
21 ADDITIONAL EVIDENCE THAT WE COULD PRESENT CONCERNING THOSE  
22 ISSUES. WE CAN'T DO IT BECAUSE THE DECISION OF THE JUDGE AT  
23 THE TIME OF THE PRELIMINARY HEARING IS BASED SOLELY ON THE  
24 EVIDENCE PRESENTED AT THE TIME OF THE PRELIMINARY HEARING.  
25 I'M ELABORATING A LOT AS I UNDERSTAND THE LAW, AS I KNOW YOU  
26 KNOW IT MUCH MUCH BETTER THAN I DO, BUT FOR BENEFIT OF MY  
27 CLIENT.

28 THE COURT: YOU'RE RIGHT. THE 995 MOTION TO

1 DISMISS HAS TO BE BASED UPON THE FOUR CORNERS, SO TO SPEAK,  
2 OF THE PRELIMINARY EXAMINATION TRANSCRIPT. AND SO I REVIEW  
3 THAT TRANSCRIPT WITH A VIEW TOWARDS WHETHER THE EVIDENCE  
4 RECEIVED AT THE PRELIMINARY EXAMINATION PROVIDES, FOR  
5 PURPOSES OF THAT HEARING, SUFFICIENT EVIDENCE FOR MR. BURTON  
6 TO BE HELD TO ANSWER AT TRIAL ON THE CHARGES WHICH HAVE NOW  
7 BEEN FILED AGAINST HIM AND WHICH ARE PENDING IN THE AMENDED  
8 INFORMATION. SO YOU'RE QUITE CORRECT, AND I'M PREPARED TO  
9 HEAR AND RULE UPON THAT MOTION TODAY.

10 SO PUTTING THAT ASIDE FOR THE MOMENT, PROCEED,  
11 PLEASE, AS TO ANY FURTHER JUSTIFICATION RELATIVE TO  
12 CONTINUANCE OF THE 1538.5 MOTION TO SUPPRESS HEARING AND/OR  
13 THE TRIAL.

14 MR. ADAIR: COULD I HAVE JUST A MOMENT, YOUR  
15 HONOR?

16 THE COURT: SURE.

17 MR. ADAIR: MY CLIENT INFORMS ME HE WANTS AN IN  
18 CAMERA HEARING.

19 THE COURT: WELL, WHAT HE WANTS AND WHAT HE'S  
20 GOING TO GET ARE TWO DIFFERENT THINGS. THERE'S NO REASON TO  
21 GO IN CAMERA. WE'RE GOING TO PROCEED ON THE RECORD.

22 MR. ADAIR: MY CLIENT ALSO INFORMED ME HE WOULD  
23 LIKE A MARSDEN.

24 THE COURT: NO. WE'RE NOT GOING TO TAKE UP A  
25 MARSDEN MOTION BECAUSE, AGAIN, I'M VERY FAMILIAR WITH THE  
26 HISTORY OF THIS CASE AND, FRANKLY, ~~THE CRAFTSMANSHIP~~ ~~MR.~~  
~~PURDON HAS BEEN CAUGHT IN HIS PREDICAMENT.~~ YOU'RE NOW THE THIRD  
27 ATTORNEY OF RECORD. AT ANOTHER TIME HE HAS SOUGHT MARSDENS  
28

1 AGAINST PREVIOUS COUNSEL, AND I GUESS HE'S OF THE MIND THAT  
2 HE DRIVES THIS CASE. WELL, ~~REASON TO DISMISS~~  
3 ~~REASON~~ AND I KNOW OF NO REASON THAT WOULD JUSTIFY A  
4 MARDSEN HEARING PRESENTLY CONCERNING YOUR REPRESENTATION OF  
5 HIM.

6 MR. ADAIR: CAN I HAVE JUST A MOMENT, YOUR  
7 HONOR?

8 (PAUSE)

9 MR. ADAIR: MR. BURTON IS INDICATING TO ME THAT  
10 THERE ARE SOME ADDITIONAL ITEMS OF EVIDENCE THAT HE'S  
11 DISCOVERED THAT SHOULD BE THE SUBJECT OF THE 1538.5  
12 SUPPRESSION MOTION THAT WERE NOT LISTED IN THE LIST OF ITEMS  
13 TO BE SUPPRESSED.

14 THE COURT: SOUNDS TO ME LIKE YOUR PRESENT  
15 MOTION AND THE LIKE MOTION THAT WAS FILED BY THE PRIOR  
16 ATTORNEY, MR. PLUMBER, ~~IS SUFFICIENTLY COMPREHENSIVE SO AS~~  
17 ~~TO ENCOMPASS AND ADDRESS ALL ITEMS OF EVIDENCE THAT WERE~~  
18 ~~SEIZED IN CONJUNCTION WITH THIS PRESENT CASE.~~

19 MR. ADAIR: HE HAS A LIST OF APPROXIMATELY 41  
20 ITEMS WHICH WERE PART OF THE EVIDENCE LIST BY THE POLICE  
21 DEPARTMENT THAT HE WISHES SUPPRESSED.

22 THE COURT: WE'LL MAKE A COPY OF THAT LIST,  
23 TREAT IT AS AN ATTACHMENT TO THE PENDING MOTION, AND DEEM  
24 THAT EVIDENCE TO FALL WITHIN THE CONFINES OF THE PRESENT  
25 MOTION.

26 DO YOU HAVE ANY QUARREL WITH THAT, MISS HANNAH?

27 MS. HANNAH: NO, YOUR HONOR.

28 THE COURT: ALL RIGHT. MAKE THESE COPIES,

1 PLEASE, OF THAT TWO-PAGE DOCUMENT.

2 *Suspension  
of Court*  
3 MR. ADAIR: THERE ARE TWO OTHER ITEMS THAT I  
4 DON'T BELIEVE ARE ON THE LIST. ONE IS A CAMERA THAT THE  
5 ALLEGED VICTIM IN THIS CASE HAD AND APPARENTLY WAS USING TO  
6 [REDACTED]

7 THE COURT: SO HOW IS THAT PROPERLY SUBJECT TO A  
8 SUPPRESS MOTION?

9 MR. ADAIR: COULD I HAVE A MOMENT, YOUR HONOR?

10 MR. BURTON IS ASKING FOR SOME TIME SO HE CAN  
11 FIND THE PAPER CONCERNING THE CAMERA. THE OTHER ISSUE MAY  
12 BE --

13 THE COURT: HE DOESN'T HAVE ANY STANDING UNLESS  
14 IT IS AMONG THE ITEMS SEIZED FROM HIS VEHICLE OR HIS  
15 RESIDENCE.

16 MR. ADAIR: THE OTHER ITEM IS THE AUTOMOBILE.

17 THE COURT: ALL RIGHT. FOR THE RECORD, THE TWO  
18 PAGES THAT I DIRECTED THE CLERK TO COPY, THOSE ARE BEING  
19 RETURNED TO MR. BURTON AT THIS TIME. COPIES THEREOF HAVE  
20 BEEN MADE FOR THE COURT, ALSO FOR MR. ADAIR AND MISS HANNAH,  
21 AND THESE TWO PAGES WILL BE TREATED AS AN ATTACHMENT TO THE  
22 MOTION, RECENTLY FILED 1538.5 MOTION DEEMED A SUPPLEMENTAL  
23 MOTION FILE STAMPED JANUARY 14TH OF THIS YEAR AS FILED BY  
24 MR. ADAIR.

25 MR. ADAIR, GO AHEAD.

26 MR. ADAIR: CONCERNING THE CAMERA, I BELIEVE IT  
27 IS, THE AUTOMOBILE IS NOT SUBJECT TO A SUPPRESSIVE MOTION  
28 BECAUSE IT'S PHYSICAL EVIDENCE WHICH IS EXONERATORY OR MAY



1 BE EXCULPATORY. HE FEELS IT IS EXCULPATORY.

2 THE COURT: WELL, THAT'S PROOF AGAIN THAT A  
3 LITTLE KNOWLEDGE IS A DANGEROUS THING. THAT CAMERA IS NOT  
4 SUBJECT TO ANY SUPPRESSION MOTION.

5 MR. ADAIR: COULD I HAVE ONE MOMENT, YOUR  
6 HONOR?

7 (PAUSE)

8 MR. ADAIR: YOUR HONOR, MR. BURTON APOLOGIZES. I  
9 THINK HE UNDERSTANDS WHAT THE ISSUES ARE TODAY. AT THIS  
10 TIME HE'S APOLOGIZING TO THE COURT THAT HE'S TAKEN UP YOUR  
11 TIME ON AN ISSUE THAT IS REALLY MORE OF A TRIAL ISSUE OR  
12 DISCOVERY ISSUE.

13 BY THE WAY, COULD I ADDRESS DISCOVERY BRIEFLY?

14 THE COURT: NO. WHEN I SAY "NO," [REDACTED]

15 [REDACTED]  
16 [REDACTED] WHAT I'M GOING TO SAY IS THAT THERE WAS  
17 [REDACTED] MY SUGGESTION FOR A CONTINUANCE OF THE MOTION TO  
18 [REDACTED] SUPERSEDE EVIDENCE. OKAY. THE EVIDENCE THAT'S MOTION FOR CONTINUANCE,  
19 [REDACTED] THAT IS TO SAY, THEN WE'RE GOING TO CONTINUE WITH THE  
20 [REDACTED] HEARING ON THE 1538 MOTION, FOLLOWING UPON THE RULING ON  
21 [REDACTED] THAT MOTION. NO SURPRISES. IF THERE ARE FURTHER MOTIONS RELATING  
22 [REDACTED] OF A REQUEST FOR A CONTINUANCE OF THE TRIAL DATE AND/OR A  
23 [REDACTED] MOTION OR DISCUSSION AS TO THE SUBJECT MATTER OF THE  
24 [REDACTED] DISCOVERY, [REDACTED] SOURCE [REDACTED]  
25 [REDACTED] EVENTS.

26 MR. ADAIR: I WOULD BRIEFLY, YOUR HONOR, LIKE TO  
27 BE HEARD CONCERNING, YOU KNOW, THE HISTORY OF THE CASE. THE  
28 FACT THAT I WAS APPOINTED IN NOVEMBER, I HAVE BEEN MEETING

1 WITH MR. BURTON AND WORKING WITH HIM. I THINK IT'S OBVIOUS  
2 TO THE COURT AT THIS TIME THAT MR. BURTON IS VERY CONCERNED  
3 ABOUT THE OUTCOME OF THIS CASE AND IS --

4 THE COURT: I APPRECIATE THAT AND THAT'S  
5 CERTAINLY APPROPRIATE.

6 MR. ADAIR: AND HE REALIZES THAT HE'S FACING A  
7 POSSIBLE LIFE TOP SENTENCE WHERE HE VERY WELL COULD DIE IN  
8 PRISON SHOULD HE GET THE -- BE CONVICTED OF THESE CHARGES,  
9 AND, THEREFORE, BE SENTENCED ON THE CHARGES. HE AND I HAVE  
10 BEEN TRYING TO WORK TOGETHER CLOSELY. I HAVE BEEN TRYING TO  
11 INCORPORATE INTO THE MOTIONS AND INTO MY ARGUMENTS HIS  
12 CONCERNS ABOUT THE EVIDENCE AND THE PROCEDURES THAT ARE  
13 INVOLVED IN THIS CASE AND THE SEIZING OF EVIDENCE.

14 AFTER HE READ THE MOTION TO SUPPRESS THAT I  
15 FILED, MR. BURTON FELT THAT THE STATEMENT OF FACTS WAS  
16 INADEQUATE AND DID NOT FULLY AND ACCURATELY REFLECT THE

17 [REDACTED]  
18 IS ASKED ME TO CHANGE THOSE AND REFLECT MORE ACCURATELY. SO  
19 THAT'S ONE OF THE REASONS FOR THE CONTINUANCE OR THE REQUEST  
20 FOR A CONTINUANCE.

21 THE COURT: WELL, PARENTHETICALLY, IN THE  
22 COURT'S VIEW, THAT'S NOT A COMPELLING REASON TO GRANT A  
23 CONTINUANCE OF THE SUPPRESSION HEARING. THAT IS TO SAY, I  
24 DON'T TAKE THE STATEMENT OF FACTS FROM ANY BRIEF AS GOSPEL,  
25 SO TO SPEAK. THE COURT'S DETERMINATION OF A SUPPRESSION  
26 MOTION IS GOING TO BE THE RESULT OF THE APPLICATION OF LEGAL  
27 PRINCIPLES TO THE EVIDENCE WHICH IS ACTUALLY BEFORE THE  
28 COURT RELATED TO THIS CASE. AND BY THAT I MEAN THE EVIDENCE

THAT WAS RECEIVED AT THE PRELIMINARY EXAMINATION OF WHICH  
2 HEARING, AS NOTED, I HAVE A TRANSCRIPT AND HAVE THOROUGHLY  
3 REVIEWED THAT TRANSCRIPT AND THEN ADDITIONALLY,  
4 COURT'S RULING ON THE SUPPRESSION MOTION WILL BE BASED UPON  
5 ANY ADDITIONAL EVIDENCE THAT MAY BE PRESENTED BY THE PARTIES  
6 IN CONJUNCTION WITH THAT SUPPRESSION MOTION. THAT IS TO  
7 SAY, THERE ARE THREE POLICE OFFICERS IN THE COURTROOM  
8 APPEARING, FROM MY PERSPECTIVE, TO BE MEMBERS OF THE EL  
9 CAJON POLICE DEPARTMENT. MY INFERENCE IS THAT THEY'RE NOT  
10 MERELY SPECTATORS, BUT HERE PURSUANT TO SUBPOENA AND  
11 DIRECTION OF THE PROSECUTOR. SO SHE'LL PRESENT PRESUMABLY  
12 THE TESTIMONY OF ONE OR MORE OF THEM IN OPPOSITION TO THE  
13 MOTION TO SUPPRESS, AND, SIMILARLY, OF COURSE, AS YOU KNOW  
14 ON BEHALF OF MR. BURTON, HE WILL HAVE THE OPPORTUNITY TO  
15 PRESENT EVIDENCE IN THE COURSE OF THIS HEARING IN  
16 FURTHERANCE OF THE MOTION TO SUPPRESS. AND ONCE ALL OF THAT  
17 IS COMPLETE THE COURT WILL THEN MAKE ITS RULING AS A MATTER  
18 OF LAW CONSISTENT WITH THE EVIDENCE AND AFTER CONSIDERING  
19 THE ARGUMENTS OF COUNSEL.

20 MR. ADAIR: YOUR HONOR, AS FAR AS THE HISTORY OF  
21 THE CASE, THE LAST TIME WE WERE IN COURT, JANUARY THE 6TH, I  
22 HAD REQUESTED OF JUDGE EXARHOS ADDITIONAL TIME TO PREPARE  
23 FOR MOTIONS, [REDACTED], AND I FELT THAT WE DIDN'T  
24 HAVE IT AT THAT POINT. [REDACTED]  
25 [REDACTED], BUT MR. BURTON OBJECTED TO  
26 ANY FURTHER DELAY IN THIS CASE. [REDACTED]

1 ~~MR. BURTON CHANGED HIS MIND DATE SET FOR BURTON CHANGED DATE~~

2 ~~DATE SET FOR BURTON CHANGED DATE~~

3 THE COURT: THAT'S NEITHER HERE NOR THERE AT  
4 THIS MOMENT. WE'LL TALK ABOUT A MOTION TO CONTINUE THE  
5 TRIAL DATE IF AND WHEN WE GET THERE TODAY, BUT I DON'T SEE  
6 ANY REASON. NOTHING HAS BEEN PRESENTED TO ME THAT CONVINCES  
7 ME OR EVEN COMES CLOSE TO CONVINCING ME THAT THIS CASE  
8 SHOULDN'T PROCEED THIS MORNING WITH THE HEARING ON THE  
9 WELL-BRIEFED MOTION TO SUPPRESS EVIDENCE.

10 MR. ADAIR: ALL RIGHT. I THINK THE LAST ITEM,  
11 YOUR HONOR, IS THERE ARE CERTAIN ITEMS OF EVIDENCE THAT I  
12 WOULD LIKE TO LOOK AT PRIOR TO THE HEARING. ~~ARRANGEMENTS WITH THE PROSECUTION TO VIEW EVIDENCE AND~~

13 ~~ARRANGEMENTS WITH THE PROSECUTION TO VIEW EVIDENCE AND~~  
14 VIEW --

15 THE COURT: YOU'RE GOING TO HAVE TO BE A LITTLE  
16 MORE SPECIFIC THAN THAT.

17 MR. ADAIR: THERE ARE PHOTOGRAPHS THAT WERE  
18 TAKEN OF THE CAR, THE AUTOMOBILE. I DON'T KNOW -- I DON'T  
19 HAVE A LIST OF PHOTOGRAPHS. I DON'T KNOW ANYONE HAS EVER  
20 PREPARED, OR AT LEAST IT WAS NEVER GIVEN TO ME, SO I CAN'T  
21 SAY WHAT PHOTOGRAPHS EXIST AND DON'T EXIST. BUT I BELIEVE  
22 THAT THEY'RE IN THE REPORTS. IT DOES INDICATE THAT THERE  
23 ARE PHOTOGRAPHS OF MR. BURTON'S CAR, AND PART OF OUR MOTION  
24 COVERS THE SEARCH OF THE CAR. OF COURSE, IF -- I'M NOT SURE  
25 WHAT THE PROSECUTION'S POSITION IS AS FAR AS THE  
26 JUSTIFICATION FOR THE SEARCH OF MR. BURTON'S APARTMENT AND  
27 THE CAR, WHETHER THAT'S GOING TO BE RELEVANT.

28 THE COURT: JUSTIFICATION ASSERTED BY THE PEOPLE

1 IS SET OUT IN THEIR OPPOSITION AS HERETOFORE FILED THAT YOUR  
2 CLIENT ALLEGEDLY, UNDERLINE ALLEGEDLY, BECAUSE IT'S NOT YET  
3 BEEN ADDRESSED BY WAY OF EVIDENCE, [REDACTED]  
4 THE RESIDENCE, [REDACTED] <sup>ALLEGED</sup>  
5 SEARCH OF HIS APARTMENT.

7 THE COURT: THAT'S THE ONLY BASIS UPON WHICH THE  
8 PEOPLE ARE ASSERTING, AS I UNDERSTAND IT AT LEAST, AS TO THE  
9 RESIDENCE, [REDACTED]

10 [REDACTED] MR. SADALIR, YOU HAD A CHANCE WITH THE COURT, WHERE  
11 [REDACTED] YOU'RE GOING WITH THAT, [REDACTED] THE PEOPLE'S SIDE TO CONSENT BY  
12 [REDACTED] PURSUANT TO THE DRAFTING OF THE AGREEMENTS OF THE COURT OR THE  
13 [REDACTED] [REDACTED]

14 THE COURT: ALL RIGHT. ~~SO THE MOTION IS TO~~  
15 ~~CONTINUE THIS HEARING ON THE MOTION TO SUPPRESS EVIDENCE, UNTIL~~  
16 ~~WE DENOUNCE IT AND WE ARE NOW GOING TO TURN TO AN ACTUAL HEARING OF~~  
17 ~~THE MOTION.~~

18 AND, AGAIN, CONSISTENT WITH THE LOCAL RULES OF  
19 COURT, THE TRANSCRIPT OF THE PRELIMINARY EXAMINATION IS  
20 RECEIVED AS PART OF THE EVIDENCE FOR PURPOSES OF THIS  
21 PRESENT MOTION HEARING. THE SEARCHES AND SEIZURES IN  
22 QUESTION THAT GIVE RISE TO THIS SUPPRESSION MOTION WERE DONE  
23 WITHOUT A WARRANT, AND, ACCORDINGLY, THAT MEANS THE PEOPLE  
24 HAVE THE LABORING OAR TO SEEK TO LEGALLY JUSTIFY THE  
25 SEARCHES AND SEIZURES WHICH ARE BEING ATTACKED BY AND  
26 THROUGH THIS MOTION. AND SO, MISS HANNAH, YOU CAN GET IN  
27 YOUR ROWBOAT AND START PULLING ON THE OARS.

28 MS. HANNAH: THANK YOU, YOUR HONOR. THE PEOPLE

1 WENT DOWN BETWEEN YOUR CLIENT AND THE OFFICERS?

2 MR. ADAIR: YES, YOUR HONOR. ~~I WOULD NOT BE IN~~

3 ~~REDACTED~~

4 ~~REDACTED~~

5 THE COURT: ALL RIGHT. WELL, THE POINT I WAS  
6 TRYING TO ESTABLISH IS THAT THE OFFER OF PROOF IS THAT THE  
7 APARTMENT MANAGER WAS PRESENT IN OR ABOUT THE AREA AND  
8 PURPORTEDLY, THEREFORE, IN A POSITION TO HEAR OR NOT HEAR  
9 WHATEVER DID OR DID NOT TRANSPIRE?

10 MR. ADAIR: YES, YOUR HONOR.

11 THE COURT: MISS HANNAH, DO YOU HAVE ANY MR. MC  
12 KELVEY UNDER SUBPOENA FOR MONDAY'S TRIAL DATE? *NO*

13 MS. HANNAH: YES, YOUR HONOR.

14 THE COURT: I'M PREPARED TO TRAIL THIS HEARING  
15 OVER UNTIL MONDAY MORNING IN ORDER TO ALLOW YOU THE  
16 OPPORTUNITY TO HAVE EITHER OR BOTH OF THOSE INDIVIDUALS  
17 PRESENT, MR. ADAIR.

18 MR. ADAIR: THANK YOU, YOUR HONOR.

19 DO YOU WISH TO RULE ON THE 995 NOW?

20 THE COURT: I DO. AND MISS HANNAH, SINCE YOU'VE  
21 GOT MR. MC KELVEY UNDER SUBPOENA, I WOULD ASK, AS AN OFFICER  
22 OF THE COURT, THAT YOU WORK WITH MR. ADAIR IN ORDER TO  
23 HOPEFULLY DIRECT HIS PRESENCE MONDAY MORNING FOR PURPOSES OF  
24 THIS HEARING.

25 MR. ADAIR: YOUR HONOR, MAYBE I MISSPOKE. WHAT  
26 I SAID WAS CONFUSING. I HAD HIM UNDER SUBPOENA. THE  
27 PROSECUTION DID NOT.

28 THE COURT: I UNDERSTOOD MISS HANNAH TO SAY SHE

1 DID HAVE HIM UNDER SUBPOENA.

2 MS. HANNAH: NOT FOR THE MOTION, YOUR HONOR.

3 THE COURT: NO, I UNDERSTAND.

4 MS. HANNAH: FOR TRIAL.

5 THE COURT: I MEANT FOR TRIAL ON MONDAY.

6 THE COURT: ON MONDAY.

7 MR. ADAIR: I'M SORRY.

8 THE COURT: YOU RELEASED HIM TODAY, BUT SHE'S  
9 GOT HIM UNDER THUMB, SO TO SPEAK, FOR TRIAL ON MONDAY.  
10 THAT'S WHY I'M ENLISTING HER ASSISTANCE TOGETHER WITH YOUR  
11 RENEWED EFFORTS TO HAVE HIM HERE MONDAY MORNING. OKAY?

12 MR. ADAIR: YES, SIR.

13 THE COURT: ALL RIGHT. AND AS TO THE APARTMENT  
14 MANAGER, YOU'VE GOT BETWEEN NOW AND THEN TO ACCOMPLISH THAT  
15 SUBJECT TO YOUR DISCRETION. SO THAT, FOR THE MOMENT, WILL  
16 CONCLUDE THE HEARING ON THE MOTION TO SUPPRESS, WHICH  
17 HEARING WILL THEN RESUME ON MONDAY, JANUARY 31ST AT 8:30 IN  
18 THE MORNING IN THIS DEPARTMENT.

19 AS TO THE 995 MOTION, THEN, AS PREVIOUSLY  
20 STATED, THE COURT'S REVIEWED ALL OF THE MOVING PAPERS, THE  
21 PEOPLE'S OPPOSITION, AND I'VE THOROUGHLY REVIEWED THE  
22 PRELIMINARY EXAMINATION TRANSCRIPT.

23 SO MR. ADAIR, YOU WISH TO BE HEARD AS TO THAT  
24 MOTION?

25 MR. ADAIR: BRIEFLY, YOUR HONOR.

26 I PUT THE LAW IN THE MOVING PAPERS. I DON'T  
27 THINK IT'S NECESSARY TO RECITE THE LAW AGAIN. I'M SURE YOUR  
28 HONOR IS EXTREMELY AWARE OF WHAT THE LAW IS CONCERNING A 995

1 MR. ADAIR: THE COURT'S VIEW.  
2 THE COURT: WELL, THAT'S --  
3 MR. ADAIR: COULD I HAVE A MOMENT WITH MR.  
4 BURTON?

5 THE COURT: THAT'S DIFFICULT TO SAY BECAUSE I  
6 DON'T KNOW THE PARAMETERS NECESSARILY OF THE APARTMENT  
7 MANAGER'S TESTIMONY, BUT WHAT I'M HEARING IN ANY EVENT, IS  
8 THAT SAID INDIVIDUAL HAS NOT BEEN SERVED?

9 MR. ADAIR: THAT'S CORRECT, YOUR HONOR.

10 THE COURT: YOU WANT A MOMENT, GO AHEAD.

11 MR. ADAIR: THANK YOU, YOUR HONOR.

12 THE COURT: MISS HANNAH.

13 MS. HANNAH: THAT'S MR. MC KELVEY. HE WAS TOLD  
14 TO BE HERE AT 8:30.

15 THE COURT: GREAT. MR. MC KELVEY HAS JUST  
16 WALKED INTO THE COURTROOM.

17 MR. ADAIR.

18 MR. ADAIR: THAT'S CORRECT, YOUR HONOR. THAT IS  
19 HIM.

20 THE COURT: ALL RIGHT. THEN PUTTING THE MANAGER  
21 ASIDE FOR THE MOMENT, DO YOU WISH TO CALL MR. MC KELVEY?

22 MR. ADAIR: COULD I HAVE A MOMENT WITH MY  
23 CLIENT, YOUR HONOR?

24 THE COURT: SURE.

25 MR. ADAIR.

26 MR. ADAIR: YES, YOUR HONOR. THANK YOU.

27 BEFORE WE GO ANY FURTHER, YOUR HONOR, MR. BURTON  
28 WOULD LIKE YOU TO READ HIM THE COURT RULES CONCERNING HIS

1           RIGHTS TO A CONTINUANCE, HIS RIGHT TO AN IN CAMERA HEARING  
2           AND HIS RIGHT TO APPEAL.

3           THE COURT: WELL, I'M NOT GOING TO DO ANY OF  
4           THAT AT THE MOMENT. PLUS IT'S NOT MY FUNCTION TO RECITE LAW  
5           AND PROCEDURE FOR THE BENEFIT OF MR. BURTON. WE'RE IN THE  
6           MIDST OF THIS HEARING AND WE'RE EITHER GOING TO CONCLUDE  
7           THIS HEARING OR ELSE WE'RE GOING TO FURTHER THE HEARING, SO  
8           TO SPEAK, BY ELICITING ADDITIONAL TESTIMONY.

9           MR. ADAIR: THANK YOU, YOUR HONOR. COULD I TALK  
10          TO MR. MC KELVEY VERY, VERY BRIEFLY, YOUR HONOR?

11          THE COURT: ALL RIGHT. COUNSEL, I THINK WHAT  
12          WE'RE GOING TO DO IS THIS: MINDFUL THAT IT'S 8:40 IN THE  
13          MORNING Owing TO CERTAIN CIRCUMSTANCES THAT HAVE ARisen OVER  
14          THE WEEKEND, I'M GOING TO BE DOING THE CALL OF THE CALENDARS  
15          IN DEPARTMENT 11 AT 9:00, AND SO WHAT I EXPECT TO DO IS  
16          TRAIL MR. BURTON'S CASE FOR FURTHER HEARING OF THE MOTION TO  
17          SUPPRESS, ALSO MINDFUL THAT IT IS ON THE TRIAL CALENDAR.  
18          WE'LL TRAIL IT HERE FOR THAT PURPOSE AS WELL AND MINDFUL OF  
19          WHAT I INDICATED ON FRIDAY BY WAY OF A CONTINUANCE OF THE  
20          TRIAL PRESUPPOSING MR. BURTON IS PREPARED TO WAIVE HIS  
21          SPEEDY TRIAL RIGHTS.

22          SO WHY DON'T YOU BOTH CONSIDER YOURSELVES FREE  
23          UNTIL 9:15 AT THE EARLIEST, AND AS SOON AS I CAN CONCLUDE MY  
24          BUSINESS NEXT DOOR I'LL BE BACK FOR THIS CASE.

25          MISS HANNAH.

26          MS. HANNAH: YOUR HONOR, I JUST ALSO WANTED TO REMIND  
27          THE COURT I HAVE ANOTHER MATTER THAT'S --

28          THE COURT: I'M AWARE OF THAT.

1 MS. HANNAH: AND I HAD AN EX-PARTE MATTER AT  
2 9:30 WITH MISS COYNE ON THE CUMMINGS MATTER.

3 THE COURT: EX-PARTE WITH WHOM?

4 MS. HANNAH: WELL, ACTUALLY, IT'S NOT --  
5 ACTUALLY, MS. COYNE IS GOING TO BE HERE, SO IT'S NOT  
6 EX-PARTE. I WAS ORIGINALLY SCHEDULED TO BE WITH JUDGE  
7 EXARHOS.

8 THE COURT: JUDGE EXARHOS WILL BE HERE FOR THE  
9 9:30 CALENDAR.

10 MS. HANNAH: GREAT. THANK YOU.

11 THE COURT: ALL RIGHT. SO ANYWAY, WE'LL WORK  
12 AROUND OUR RESPECTIVE SCHEDULES AND WE'LL BE BACK IN.

13 MR. BURTON'S CASE AT THE EARLIEST AT 9:15.

14 MR. ADAIR: THANK YOU, YOUR HONOR.

15 THE COURT: THANK YOU.

16 (RECESS TAKEN.)

17 THE COURT: ALL RIGHT. WE'RE ONCE AGAIN ON THE  
18 RECORD IN MR. BURTON'S CASE WITH COUNSEL OF RECORD AGAIN  
19 PRESENT.

20 STATUS UPDATE, PLEASE.

21 MR. ADAIR: YOU KNOW, YOUR HONOR, I THINK THE  
22 BOTTOM LINE IS THE DEFENSE SHOULD REQUEST A CONTINUANCE, AND  
23 I AM REQUESTING A CONTINUANCE OF THIS. IN TALKING TO  
24 MR. BURTON --

25 THE COURT: WHEN YOU SAY "OF THIS," YOU MEAN THE  
26 SUPPRESSION MOTION --

27 MR. ADAIR: THAT'S CORRECT.

28 THE COURT: -- IN PARTICULAR?

1 [REDACTED] I DON'T REMEMBER THAT.  
2 [REDACTED] I DON'T REMEMBER THAT.  
3 [REDACTED] I DON'T REMEMBER THAT.  
4 [REDACTED] I DON'T REMEMBER THAT.  
5 [REDACTED] I DON'T REMEMBER THAT.  
6 [REDACTED]  
7 Q. A. YES. I WAS KNOCKED OUT OF THE CAR AND THEN I SCREAMED TO  
8 THE CAR OF ANOTHER'S SIDE. I DON'T KNOW WHAT THAT WAS.  
9 A DIFFERENT POLICE OFFICER AT THAT POINT CALLED ME.  
10 Q. WHEN YOU WERE YOU READ YOUR RIGHTS TO YOU? WHEN YOU WERE CALLED  
11 MINUTE, YOUR HONOR.  
12 [REDACTED] MR. MCKELVEY, BEFORE YOU WERE TRANSPORTED TO  
13 THE POLICE STATION, DID THE OFFICER ADVISE YOU OF YOUR  
14 RIGHTS?  
15 A. MEANING READING MY RIGHTS TO ME.  
16 Q.  
17 A. OH NO.  
18 Q. DID THEY READ YOUR RIGHTS TO YOU AT THE POLICE  
19 STATION?  
20 A. NO.  
21 Q. AND AT THE POLICE STATION YOU DID ANSWER THE  
22 OFFICER'S QUESTIONS AND BASICALLY GAVE HIM A STATEMENT;  
23 CORRECT?  
24 A. YAH THAT IS CORRECT.  
25 Q. BUT YOU WERE NEVER READ YOUR RIGHTS; CORRECT?  
26 THE COURT: HE'S ALREADY ANSWERED THAT AND IT'S  
27 IRRELEVANT AND IT'S BECOMING VERY CLEAR THAT MR. BURTON IS  
28 NOW DIRECTING THE QUESTIONING BY SCRIBBLING NOTES FOR YOUR

1 BENEFIT, MR. ADAIR, AND FRANKLY, A LOT OF THE QUESTIONS ARE  
2 IRRELEVANT.

3 DO YOU HAVE ANYTHING FURTHER?

4 MR. ADAIR: IF I COULD HAVE A MOMENT, YOUR  
5 HONOR.

6 YOUR HONOR, MY CLIENT WOULD LIKE YOU TO KNOW  
7 [REDACTED]

9 THE COURT: WHAT'S THAT SUPPOSED TO MEAN?

10 MR. ADAIR: I DON'T KNOW, YOUR HONOR.

11 THE COURT: NOR DO I. SO WE'RE GOING TO KEEP ON  
12 GOING.

13 MR. ADAIR: HE WOULD LIKE YOUR HONOR TO KNOW  
[REDACTED]

15 THE COURT: WELL, I UNDERSTAND THAT HE MAY HAVE  
16 A VISION PROBLEM, BUT THAT'S NEITHER HERE NOR THERE FOR  
17 PURPOSES OF THIS PRESENT HEARING.

18 DO YOU HAVE ANYTHING FURTHER BY WAY OF QUESTIONS  
19 TO THE WITNESS?

20 MR. ADAIR: NO, YOUR HONOR.

21 THE COURT: MISS HANNAH, CROSS-EXAMINATION.

23 CROSS-EXAMINATION

24 BY MS. HANNAH:

25 [REDACTED]

26 [REDACTED]

27 [REDACTED]

1                   MOMENT?

2                   (PAUSE)

3                   MR. ADAIR: YOUR HONOR, COULD WE SUPPLEMENT THE  
4                   LIST OF ITEMS THAT WE'RE REQUESTING BE SUPPRESSED WITH AN  
5                   ADDITIONAL LIST? COULD THIS BE MARKED AS AN EXHIBIT?

6                   THE COURT: WELL, LET'S MAKE COPIES OF IT FOR  
7                   YOU AND MISS HANNAH, AND THEN I'LL REVIEW IT AND WE'LL GO  
8                   FROM THERE.

9                   MR. ADAIR: I DID SHOW IT TO THE PROSECUTOR,  
10                  YOUR HONOR.

11                  THE COURT: I WANTED HER TO HAVE A COPY OF IT.  
12                  IS THIS SOMETHING YOUR CLIENT GENERATED?

13                  MR. ADAIR: [REDACTED] THIS IS ACTUALLY  
[REDACTED]

15                  THE COURT: OH, ALL RIGHT. THEN LET ME SEE IT.

16                  ALL RIGHT. [REDACTED]

17                  ENTITLED "EVIDENCE LIST" AND ITEMIZING CERTAIN ITEMS  
[REDACTED]

19                  [REDACTED] AND THIS DOCUMENT WILL SIMPLY BE TREATED AS  
20                  AN ATTACHMENT TO MR. ADAIR'S MOTION TO SUPPRESS EVIDENCE AS  
21                  PREVIOUSLY FILED.

22                  ALL RIGHT. MR. ADAIR, THAT CONCLUDES THE  
23                  PRESENTATION OF EVIDENCE ON BEHALF OF MR. BURTON FOR  
24                  PURPOSES OF THE PRESENT MOTION; CORRECT?

25                  MR. ADAIR: THAT'S CORRECT, YOUR HONOR.

26                  THE COURT: MISS HANNAH, DO YOU HAVE ANY FURTHER  
27                  EVIDENCE TO PRESENT ON BEHALF OF THE PEOPLE?

28                  MS. HANNAH: NO, YOUR HONOR.

0032

1 Gilbert E. Newton 31801  
2 133 West Lexington  
El Cajon CA 92020  
619 444 1121

F I L E D  
Clerk of the Superior Court

NOV 10 2004

3 Attorney for Eric Burton  
4  
5  
6  
7

By: A. NARDUCCI, Deputy

## 8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 FOR THE COUNTY OF SAN DIEGO

10  
11 THE PEOPLE OF THE STATE  
12 OF CALIFORNIA,

No. SCE 238643

13 Plaintiff,  
14 v.  
15 ERIC BURTON,DECLARATION OF COUNSEL  
RE. CONFLICT OF INTEREST.Hrg. 11-16-04  
8:30 a.m.  
Dept. 1216 Defendant.  
17 \_\_\_\_\_  
18 \_\_\_\_\_  
19 \_\_\_\_\_  
20 \_\_\_\_\_  
21 \_\_\_\_\_  
22 \_\_\_\_\_  
23 \_\_\_\_\_  
24 \_\_\_\_\_  
25 \_\_\_\_\_  
26 \_\_\_\_\_  
27 \_\_\_\_\_  
28 \_\_\_\_\_

Gilbert E. Newton declares: On November 9, 2004, I was appointed to defend Eric Burton in the above case. I informed the Court that I would check a possible conflict of interest involving witness Derrell McKelvey, and report to the Court.

The preliminary examination for Eric Burton was held April 28, 2004. During the hearing I was called in to counsel defense witness Derrell McKelvey about his right against self-incrimination.

ALLEGEDLY

0033

1 formed by DDA Mike Przytulski that a witness had said that  
2 [REDACTED]

3 [REDACTED] After discussing the case with  
4 Mr. McKelvey I told him that he could possibly be prosecuted  
5 [REDACTED]

6 advised him not to testify.

7 I did not remember advising the witness in this case until  
8 after Attorney Plummer reminded me November 9 in Dept. 12. I  
9 did not remember the details until returning to my office to  
10 check my records.

11 In view of these facts I believe that I have a conflict of  
12 interest which would bar me from defending Eric Burton. Mr.  
13 Burton stated that he wants a Marsden motion re. my appointment.  
14 Therefore I request the Court to appoint other counsel for the  
15 defendant.

16 I declare under penalty of perjury that the foregoing is true  
17 and correct. El Cajon, California. November 10, 2004

18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28



Gilbert E. Newton  
Attorney for Eric Burton

1 THAT'S JUST HER HEARING WHAT MAY BE GOING ON IN THE  
2 BACKGROUND.

3 **MR. ADAIR:** I AGREE, YOUR HONOR.

4 **THE COURT:** ALL RIGHT. SO UNDERSTANDING THAT  
5 SHE'S NOT GOING TO GIVE A BLOW-BY-BLOW DESCRIPTION OF  
6 WHAT WAS TOLD TO HER.

7 **MR. TROCHA:** AND I WASN'T TRYING TO DO  
8 ANYTHING LIKE THAT. AND I'LL EXPLAIN TO HER THAT SHE  
9 WON'T BE TALKING ABOUT THAT.

10 **THE COURT:** ALL RIGHT. THEN ANYTHING ELSE  
11 THAT WE NEED TO ADDRESS BEFORE YOU TAKE YOUR BREAK?

12 **MR. TROCHA:** I DON'T THINK SO.

13 **THE COURT:** IF YOU CAN MAKE SURE MR. THOMAS  
14 KNOWS SINCE HE ISN'T GOING TO BE ABLE TO SIT IN ON THE  
15 PROCEEDINGS, HE SHOULDN'T BE HERE. AND THAT WILL AVOID  
16 HIM RUNNING INTO MRS. CLARK WHEN AND IF SHE HAPPENS TO  
17 SHOW UP.

18 **MR. TROCHA:** OKAY.

19 **THE COURT:** ALL RIGHT. THANK YOU.

20 (RECESS FROM 2:27 P.M. TO 2:53 P.M.)

21 (AT 2:53 P.M. THE JURY ENTERED THE COURTROOM  
22 AND THE FOLLOWING PROCEEDINGS WERE HAD:)

23 **THE COURT:** ALL RIGHT. MEMBERS OF THE JURY  
24 HAVE RETURNED. COUNSEL AND THE DEFENDANT ARE PRESENT.  
25 YOU MAY CALL YOUR NEXT WITNESS.

26 **MR. TROCHA:** PEOPLE WOULD LIKE TO CALL KENDALL  
27 HILDENBRAND.

28 (THE NEXT WITNESS ENTERS THE COURTROOM.)

1 [REDACTED] MCKELVEY  
2 MR. PRZYTULSKI: YOUR HONOR, COULD WE  
3 BRIEFLY HAVE AN OFFER PROOF? HE'S ENTITLED TO PUT  
4 ON AN AFFIRMATIVE DEFENSE, I JUST WANT TO MAKE SURE  
5 IT'S BEING OFFERED FOR THAT.

11:48:47

6 MR. PLUMMER: MR. MCKELVEY IS TESTIFYING  
[REDACTED]

11:48:57

8 TESTIFYING TO THE EVENT THAT OCCURRED ON MARCH 19,  
9 AND TOO, I BELIEVE, THAT HIS TESTIMONY WILL RELATE  
10 TO MR. THOMAS'S OR MR. BURTON'S STATE OF MIND.

11:49:13

11 MR. PRZYTULSKI: JUDGE, I DON'T WANT TO DO  
12 ANYTHING BEFORE HE COMES IN. I DON'T WANT TO DO OR  
13 SAY ANYTHING THAT HE CAN HEAR THAT WOULD PREVENT  
14 HIM FROM TESTIFYING, BUT BASED ON WHAT I'VE HEARD  
[REDACTED]

11:49:25

15 [REDACTED]  
16 [REDACTED] ON ONE OCCASION [REDACTED]  
17 THINKS APPROPRIATE, BUT I DON'T WANT TO BRING THAT  
18 TO THE WITNESS' ATTENTION, BECAUSE I DON'T WANT TO  
19 BE ACCUSED OF INTIMIDATING HIM.

20 THE COURT: COUNSEL, I'M GOING TO HAVE TO  
21 HAVE HIM COUNSELED.

11:49:42

22 MR. PLUMMER: THAT'S OBVIOUSLY THE COURT'S  
23 DECISION, WHATEVER THE COURT WISHES.

24 THE COURT: IF YOU ARE GOING TO ASK HIM  
25 [REDACTED]  
26 [REDACTED] HE IS GOING  
27 TO HAVE TO BE ADVISED OF HIS 5TH AMENDMENT RIGHTS,  
28 AND I NEED TO HAVE HIM COUNSELED. SO LET'S FIND

11:49:50

13:49:48

2 MR. NEWTON: OKAY. THANK YOU, YOUR HONOR.

3 THE COURT: ALL RIGHT. BEFORE WE GO ANY  
4 FURTHER, IT APPEARS, MR. MCKELVEY, THAT YOU JUST  
5 HAD A DISCUSSION WITH MR. NEWTON, WHO THE COURT HAS  
6 APPOINTED TO REPRESENT YOU AND ADVISE YOU BEFORE  
7 YOU GIVE TESTIMONY IN THIS MATTER; ISN'T THAT  
8 CORRECT, THAT YOU'VE HAD THAT DISCUSSION?

13:50:12

9 THE WITNESS: [REDACTED]

10 THE COURT: AND HE WAS DISCUSSING WITH YOU  
11 YOUR RIGHT UNDER THE FIFTH AMENDMENT OF THE UNITED  
12 STATES CONSTITUTION NOT TO TESTIFY IF THAT IS YOUR  
13 CHOICE; IS THAT TRUE?

13:50:23

14 THE WITNESS: [REDACTED]

15 THE COURT: AND AFTER YOUR DISCUSSION WITH  
16 MR. NEWTON, YOU HAVE DECIDED THAT YOU ARE GOING TO  
17 ANSWER QUESTIONS WITH REGARD TO THE INCIDENT ON THE  
18 19TH OF MARCH.

13:50:33

19 THE WITNESS: [REDACTED]

20 THE COURT: OKAY.

13:50:46

21 CONTINUE COUNSEL. THANK YOU.

22 MR. NEWTON, IF YOU WANT TO HAVE A SEAT

23 [REDACTED] AT THE END OF THE WITNESS STAND, PLEASE LEAVE.

24 [REDACTED] GO ON.

25 MR. NEWTON: OKAY. THANK YOU.

13:50:56

26 BY MR. BROWN

27 Q. YOU WERE PRESENT AT THE END OF THE WITNESS STAND.

28 PLACE ON MARCH 19TH.

22

0375

SCE238643 Burton, Eric

7-25-05

10:47 am Court is in recess.

11:07 am Court is again in session with all counsel as previously noted, the defendant and all jurors present. Examination of Derrell McKelvey resumes.

11:10 am Derrell McKelvey is excused. The jurors are admonished and excused for the day and ordered to return on July 27, 2005 at 9:00 am in department 10.

Out of the presence of the jurors, the Court states that there is no basis for a PC1368, which was raised by Attorney Adair earlier today.

→ Attorney Adair indicates that a potential witness, Melanie Clark, is living with her mother and that the investigator has spoken to the family and the family indicated that they do not want to appear. The Court indicates that there is an active witness warrant that was issued, and if Attorney Adair feels it is necessary, he may wish to get law enforcement involved.

Attorney Adair indicates what testimony he intends to elicit from the defendant's mother if the court allows her to testify. The Court will RESERVE on this issue.

Attorney Adair requests to introduce police reports relating to the victim for the purpose of summarizing the observation of the police officers for the purpose of impeaching the witness. The Court rules that if an officer is present and may testify as to the officer's observation but DENIES the use of the police report. Attorney Adair requests that the reports be viewed as business records. The Court will RESERVE on this issue.

11:40 am Court is in recess.

1:32 pm Court is again in session with all counsel as previously noted and the defendant is present. Court and counsel discuss the admissibility of the domestic violence reports made against Mr. Thomas.

The court makes the following rulings on the pending motions/issues:

\* The Court does not view the police reports as being business records – motion is DENIED.

The Court RESERVES on the issue that the defense may use the domestic violence reports made by Ms. Givens. The Court may allow the officer to testify as to what Ms. Givens reported.

\* The Court will allow limited testimony by defendant's mother as to the defendant's state of mind causing the defendant to file the restraining order against Mr. Thomas.

2:12 pm Court and counsel discuss jury instructions. The Court will RESERVE on the self-defense instructions.

0379

SCE238643 Burton, Eric

7-27-05

The Court reviews the proposed instructions offered by the defense. An instruction # 1 is withdrawn; #2, 3, 4 and 7 are refused; 5a and 5b are modified as to Mr. Thomas; #6 is modified based on Humphrey.

→ 11:55 am The people indicate that they object to the possibility that the defense may have testimony relating to a backpack found in the defendant's car as it was never identified as being the defendants. The Court **RESERVES** on this issue. The defense also requests that the Court take judicial notice of the restraining order the defendant filed against the victim. The Court will **RESERVE**.

12:00 pm Court is in recess.

\* 1:30 pm Court is again in session with all counsel as previously noted and the defendant is present. Defense counsel requests that he be permitted to examine the backpack found in the defendant's car [REDACTED]. The Court **GRANTS** that request.

1:35 pm Court is in recess.

1:43 pm Court is again in session with all counsel as previously noted, the defendant and all jurors are present. The defense calls **MELANIE CLARK**, who is sworn and examined.

2:05 pm Unreported sidebar held for 1 minute.

2:06 pm Examination of Melanie Clark resumes.

2:13 pm Reported sidebar held for 3 minutes.

2:16 pm Examination of Melanie Clark resumes.

2:30 pm Melanie Clark is excused. The Court states for the record that the warrant previously issued is now recalled and Ms. Clark is released from custody.

The Court takes judicial notice of case GIE021072 Burton vs. Thomas.

The following People's exhibits that were previously received are now identified:

[REDACTED] Photo of evidence telephone and batter [REDACTED] of [REDACTED]  
72 - Photo of exterior of Mr. Burton's Hyundai parked at 425 E. Main  
73 - Photo of Mr. Burton's Hyundai: detail of address

\* 2:32 pm The defense rests. The jurors are admonished and excused. Out of the presence of the jurors, the defense presents some additional documents (application for restraining order Ms. Sanders obtained against Mr. Thomas) that they would like to introduce into evidence. The Court rules that these documents may be marked as an exhibit, but is not admissible and will not be received.

1 THE COURT: MR. TROCHA, ANY THOUGHTS?

2 MR. TROCHA: THERE'S NO EVIDENCE THE DEFENDANT  
3 KNOWS OF ANYTHING IN MR. THOMAS' PAST, AND ANYTHING ELSE  
4 WOULD BE SPECULATION.

5 (THE CLERK HANDS A NOTE TO THE COURT.)

6 THE COURT: APPARENTLY MS. CLARK WILL BE HERE  
7 THIS AFTERNOON IN HANDCUFFS OR OTHERWISE. LET'S SEE.

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

26 [REDACTED]

27 [REDACTED]

28 [REDACTED]

18 MR. TROCHA: THE PROBLEM IS I DON'T THINK IT  
19 IS RELEVANT TO HIS REASONABLE BELIEF THERE IS NO  
20 EVIDENCE OF WHAT THE DEFENDANT BELIEVED FROM THOSE  
21 CONFRONTATIONS. THEY ARE EVIDENCE OF PRIOR  
22 CONFRONTATIONS BETWEEN THE TWO, BUT THEY DIDN'T RESULT  
23 IN VIOLENCE. THIS IS PRACTICALLY BEGGING THE JURY TO  
24 THEN TAKE THAT INTO ACCOUNT TO THE DEFENSE THAT REALLY

26 MR. ADAIR: WELL, THE --

27 MR. TROCHA: WE'RE ASKING THE JURY THEN TO GET

28 [REDACTED] INTO THE DEFENDANT'S MIND WITHOUT HAVING ACTUALLY ANY

(Coercive Interrogation but the 5th Amendment  
any action that shocks the Conscience) ②6

1 BE BACK ON THE REGULAR SCHEDULE. SO BE READY TO GO AT  
2 9:00. WE'LL GO UNTIL NOON. WE'LL RESUME AGAIN AT 1:30  
3 AND GO UNTIL 4:30. DON'T FORM ANY OPINIONS. I DIDN'T  
4 SEE ANY REPORTERS TODAY, SO I DON'T THINK THERE WILL BE  
5 ANY ARTICLES. BUT IF THERE IS ANYTHING, DON'T READ IT.

6 HAVE A GOOD EVENING.

7 (AT 3:57 P.M. THE JURY WAS EXCUSED AND THE  
8 FOLLOWING PROCEEDINGS WERE HAD:)

9 **THE COURT:** ALL RIGHT. THE MEMBERS OF THE  
10 JURY HAVE LEFT THE ROOM.

11 **MR. ADAIR:** COULD I CHECK OUTSIDE, YOUR HONOR?

12 **THE COURT:** YES. WHY DON'T YOU SEE IF  
13 MS. CLARK MIGHT BE OUT THERE.

14 ALL RIGHT. WELL, MS. CLARK ISN'T HERE.  
15 CERTAINLY IF SHE MAKES HERSELF AVAILABLE BEFORE SHE'S  
16 PICKED UP ON THE WARRANT, THEN WE WILL TALK WITH HER.  
17 OTHERWISE THE WARRANT REMAINS OUTSTANDING.

18 AND I'M ASSUMING, MR. TROCHA, YOU'RE --

19 **MR. TROCHA:** I'M REALLY TAKING NO POSITION IN  
20 THIS, YOUR HONOR.

21 **THE COURT:** WELL, THE LAW ENFORCEMENT HAS IT,  
22 AND I'M ASSUMING EVERYTHING IS BEING DONE TO LOCATE HER.

23 **MR. ADAIR:** AND I EVEN ASKED MR. THOMAS *as needed*  
24 YESTERDAY, AND HE SAYS HE KNOWS MS. CLARK'S MOTHER. AND  
25 APPARENTLY THEY HAVE THAT INFORMATION AS WELL.

26 **THE COURT:** WELL, AT LEAST THERE'S BEEN SOME  
27 CONTACT WITH HER.

28 **MR. ADAIR:** NO WONDER WE HAVEN'T SEEN HER.

1 ANYTHING UPON ANYONE.

2 **THE COURT:** YEAH. SO THAT'S FINE. WE MIGHT  
3 JUST HAVE JA'NAL MOVE A LITTLE AND THEN WE CAN PUT THE  
4 SCREEN KIND OF IN HER LOCATION. [REDACTED]

6 **MR. TROCHA:** BECAUSE I WAS THINKING MAYBE THE  
7 ALTERNATES COULD SIT OVER HERE (INDICATING) FOR THAT  
8 AND --

9 **THE COURT:** NO. I THINK IT CAN BE RIGHT IN  
10 FRONT OF ME AND THAT WILL BE FINE.

11 **MR. TROCHA:** ALL RIGHT.

12 **THE COURT:** AND I CAN EVEN GET OFF THE BENCH  
13 AND STAND OVER THERE AND WATCH TOO.

14 **MR. ADAIR:** I HAVE BEEN IN TRIALS WHERE THE  
15 JUDGE WILL GET OFF THE BENCH AND GO TO GET A BETTER  
16 VIEW.

17 **THE COURT:** ALL RIGHT. SO THAT WILL BE FINE.  
18 ANYTHING ELSE BEFORE WE RECESS?

19 **MR. TROCHA:** NO.

20 **THE COURT:** HAVE A VERY GOOD WEEKEND.

21 **MR. ADAIR:** YOU ALSO, YOUR HONOR. THANK YOU.

22 **THE COURT:** THANK YOU.

23 (AT 3:40 P.M. AN ADJOURNMENT WAS TAKEN UNTIL  
24 9:00 A.M. ON MONDAY, JULY 25, 2005.)

25

26

27

28